

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

	x	
BOARD OF TRUSTEES OF THE)	09-cv-03617 (RJS)
CITY OF FT. LAUDERDALE, et al.,)	
)	(Consolidated Action)
Plaintiffs,)	
)	ECF Case
vs.)	
)	
MECHEL OAO, et al.,)	
)	
Defendants.)	
	x	

**MECHEL OAO’S RESPONSE TO PLAINTIFFS’
“NOTICE OF SUPPLEMENTAL AUTHORITY”**

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Plaintiffs' Notice of Supplemental Authority, filed earlier today, portrays *Landmen Partners, Inc. v. Blackstone Group L.P.*, 659 F. Supp. 2d 532 (S.D.N.Y.), *rev'd sub nom. Litwin v. Blackstone Group, L.P.*, No. 09-4426-cv, 2011 WL 447050 (2d Cir. Feb. 10, 2011), as "the district court decision relied upon by [Mechel] in [its] arguments concerning" plaintiff's failure sufficiently to allege the materiality of Mechel's alleged omission. Pl. Notice at 1 (emphasis added). *Landmen*, however, was a mere "see also" in Mechel's reply brief (Docket No. 38 at 14), following Mechel's citations to and discussions of the materiality holdings in the more directly relevant *In re Open Joint Stock Vo. "Vimpel-Communications" Sec. Litig.*, No. 04 Civ. 9742 (NRB), 2006 WL 647981 (S.D.N.Y. Mar. 14, 2006) ("*VimpelCom*"), and *In re China Life Sec. Litig.*, No. 04 Civ. 2112 (TPG), 2008 WL 4066919 (S.D.N.Y. Sept. 3, 2008). The Second Circuit's decision in *Litwin* cast no doubt on either of those cases, nor did it overturn the Second Circuit's standard of materiality in fraud cases stated in *ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009).

Plaintiffs' claims against Mechel, like those in *VimpelCom* and *China Life*, sound in fraud; they are brought under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint in *Litwin*, by contrast, "explicitly d[id] not allege fraud," *Litwin*, 2011 WL 447050 at *6; it pled claims under Sections 11 and 12(a)(2) of the Securities Act of 1933, "under which, should plaintiffs' claims be substantiated, Blackstone's liability as issuer is absolute." *Id.* at 8. The pleading burden in a Section 11 case is, as the Second Circuit said, "relatively minimal" — much less stringent than that in a fraud case. *Id.* Even in *Litwin*, however, the Court held the plaintiffs to have satisfied their lesser burden only by pleading "a known trend that Blackstone reasonably expected would materially affect its investments and revenues," and thus had to disclose under Item 303 of Regulation S-K. *Id.* at *11.

Litwin thus serves only to highlight further plaintiffs' inability in this case to support their claim that Mechel committed a fraud in connection with its disclosures concerning Russian antitrust and tax law. As in *VimpelCom* and *In re Yukos Oil Co. Sec. Litig.*, No. 04 Civ. 5243 (WHP), 2006 WL 3026024 (S.D.N.Y. Oct. 25, 2006), which this case closely resembles, plaintiffs' failure to allege any precedent for the Russian government's actions against Mechel, or any other basis for their assertion that Mechel knowingly concealed an allegedly known risk, requires dismissal of their claims.

Dated: New York, New York
March 15, 2011

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By:

/s/ Jeffrey S. Jacobson

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